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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,223	02/23/2004	Thomas Maciag	536895013CT1	3032

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DRINKER BIDDLE & REATH
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EXAMINER

WOODWARD, CHERIE MICHELLE

ART UNIT	PAPER NUMBER
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1647

MAIL DATE	DELIVERY MODE
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11/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/786,223</p>	<p>Applicant(s) MACIAG ET AL.</p>	
	<p>Examiner Cherie M. Woodward</p>	<p>Art Unit 1647</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 6-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Cherie M. Woodward/
Primary Examiner, Art Unit 1647

Continuation of 3. NOTE: Applicant presents claim amendments after-final that require further search and consideration. Applicant argues that the preamble of the claims must be given patentable weight (p. 8, second paragraph; p. 11). Applicant argues that the amendments to the claims is sufficient to overcome the prior art of record because the art does not teach inhibiting the interaction of IL-1a with S100A13 (Remarks, p. 10, second paragraph). Applicant argues that angiogenesis in malignant tissues is not a comparable process to a blood vessel's response to injury (Remarks, p. 13, second full paragraph). Applicant argues that there is no motivation to combine the references of Brewer et al., and Wempe et al., as evidenced by Dayer et al., and Issekutz (Remarks, p. 14, second paragraph). Applicant argues that because Wempe does not teach a role for IL-1a monocyte adhesion, the reference would not lead a skilled artisan to arrive at the use of a copper chelator to inhibit IL-1a release from a cell to prevent macrophage infiltration (Remarks, p. 15, second paragraph). Applicant's arguments have been fully considered, but they are not persuasive.

With regard to Applicant's argument regarding the preamble of the claims, the preamble of the claims does not limit the method steps of claims 6-13. As explained in the Office Action mailed 6/19/2008, the preamble of the instant claims is merely descriptive of the inherent processes that occur upon administration of a copper chelator. The method steps of claims 6-13 do not differ in spite of their preambles stating that they are directed to different methods. The preamble of the claims does nothing more than set forth the various mechanisms of action that occur from the active method steps of administering a copper chelator, specifically TTM.

With regard to Applicant's argument that the amendments to the claims is sufficient to overcome the prior art of record because the art does not teach inhibiting the interaction of IL-1a with S100A13, this limitation requires further search and consideration. However, it is noted that the amendment is drawn to an inherent process that naturally occurs upon the administration of a systemic copper chelator (see Office Action mailed 6/19/2008 at pages 3-4 regarding inherent process limitations).

With regard to Applicant's arguments related to angiogenesis, Applicant's attempt to downplay the teachings of Brewer et al., as speculation is not supported by any evidence to the contrary and is not persuasive to overcome the art of record.

In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some rationale to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *KSR Int'l Co. v. Teleflex Inc.* 550 US ___, 82 USPQ2d 1385, at 1395 and 1396 (April 30, 2007). In the instant case, the reasonin/rationale for combining is set forth in the references themselves, as explained on page 10 of the Office Action mailed 6/19/2008, at paragraph (h) and page 11, second full paragraph.

Applicant's amendments have not overcome the pending rejections. Because the claim amendments filed after-final on 9/18/2008 raise new issues that require further search and consideration and the claim amendments are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, the claim amendments are not entered.